

exception is somewhat easier, since it is relatively simple to determine if the information is to be given to somebody within the country.

Note that in discussing what constitutes furnishing information "exclusively within" the boycotting country, the Department does not address the nature of the transaction or activity that the information relates to. It is the Department's position that the nature of the transaction, including the inception or completion of the transaction, is not material in analyzing the availability of this exception.

For example, if a shipment of goods imported into a boycotting country is held up at the time of entry, and information from the bona fide resident within that country is legally required to free those goods, the fact that the information may relate to a transaction that began outside the boycotting country is not material. The availability of the exception will be judged based on the activity of the bona fide resident within the country. If the resident provides that information of his or her own knowledge, and provides it to appropriate parties located exclusively within the country, the exception permits the information to be furnished.

Factual variations may raise questions about the application of this exception and the effect of this interpretation. In an effort to anticipate some of these, the Department has set forth below a number of questions and answers. They are incorporated as a part of this interpretation.

1. Q. Under this exception, can a company which is a U.S. person and a bona fide resident of the boycotting country provide information to the local boycott office?

A. Yes, if local law requires the company to provide this information to the boycott office and all the other requirements are met.

2. Q. If the company knows that the local boycott office will forward the information to the Central Boycott Office, may it still provide the information to the local boycott office?

A. Yes, if it is required by local law to furnish the information to the local boycott office and all the other requirements are met. The company has no control over what happens to the information after it is provided to the proper authorities. (There is obvious potential for evasion here, and the Department will examine such occurrences closely.)

3. Q. Can a U.S. person who is a bona fide resident of Syria furnish information to the Central Boycott Office in Damascus?

A. No, unless the law in Syria specifically requires information to be provided to the Central Boycott Office the exception will not apply. Syria has a local boycott office responsible for enforcing the boycott in that country.

4. Q. If a company which is a U.S. person and a bona fide resident of the boycotting country has an import shipment held up in customs of the boycotting country, and is required to provide information about the shipment to get it out of customs, may the company do so?

A. Yes, assuming all other requirements are met. The act of furnishing the information is the activity taking place exclusively within the boycotting country. The fact that the information is provided corollary to a transaction that originates or terminates outside the boycotting country is not material.

5. Q. If the U.S. person and bona fide resident of the boycotting country is shipping goods out of the boycotting country, and is required to certify to customs officials of the country at the time of export that the goods are not of Israeli origin, may he do so even though the certification relates to an export transaction?

A. Yes, assuming all other requirements are met. See number 4 above.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34950, June 1, 2000]

#### SUPPLEMENT NO. 10 TO PART 760— INTERPRETATION

(a) The words "Persian Gulf" cannot appear on the document.

This term is common in letters of credit from Kuwait and may be found in letters of credit from Bahrain. Although more commonly appearing in letters of credit, the term may also appear in other trade documents.

It is the Department's view that this term reflects a historical dispute between the Arabs and the Iranians over geographic place names which in no way relates to existing economic boycotts. Thus, the term is neither prohibited nor reportable under the Regulations.

(b) Certify that goods are of U.S.A. origin and *contain no foreign parts*.

This term appears periodically on documents from a number of Arab countries. It is the Department's position that the statement is a positive certification of origin and, as such, falls within the exception contained in §760.3(c) of this part for compliance with the import and shipping document requirements of a boycotting country. Even though a negative phrase is contained within the positive clause, the phrase is a non-exclusionary, non-blacklisting statement. In the Department's view, the additional phrase does not affect the permissibility status of the positive certificate, nor does it make the request reportable §760.5(a)(5)(iii) of this part.

(c) Legalization of documents by any Arab consulate except Egyptian Consulate permitted.

This term appears from time to time in letters of credit but also may appear in various other trade documents requiring legalization and thus is not prohibited, and a request to comply with the statement is not reportable. Because a number of Arab states do not have formal diplomatic relations with Egypt, they do not recognize Egyptian embassy actions. The absence of diplomatic relations is the reason for the requirement. In the Department's view this does not constitute an unsanctioned foreign boycott or embargo against Egypt under the terms of the Export Administration Act. Thus the term is not prohibited, and a request to comply with the statement is not reportable.

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#### SUPPLEMENT NO. 11 TO PART 760— INTERPRETATION

##### *Definition of Unsolicited Invitation To Bid*

§ 760.5(a)(4) of this part states in part:

“In addition, a United States person who receives an unsolicited invitation to bid, or similar proposal, containing a boycott request has not received a reportable request for purposes of this section where he does not respond to the invitation to bid or other proposal.”

The Regulations do not define “unsolicited” in this context. Based on review of numerous situations, the Department has developed certain criteria that it applies in determining if an invitation to bid or other proposal received by a U.S. person is in fact unsolicited.

The invitation is not unsolicited if, during a commercially reasonable period of time preceding the issuance of the invitation, a representative of the U.S. person contacted the company or agency involved for the purpose of promoting business on behalf of the company.

The invitation is not unsolicited if the U.S. person has advertised the product or line of products that are the subject of the invitation in periodicals or publications that ordinarily circulate to the country issuing the invitation during a commercially reasonable period of time preceding the issuance of the invitation.

The invitation is not unsolicited if the U.S. person has sold the same or similar products to the company or agency issuing the invitation within a commercially reasonable period of time before the issuance of the current invitation.

The invitation is not unsolicited if the U.S. person has participated in a trade mission to or trade fair in the country issuing the invitation within a commercially reasonable period of time before the issuance of the invitation.

Under § 760.5(a)(4) of this part, the invitation is regarded as not reportable if the U.S. person receiving it does not respond. The Department has determined that a simple acknowledgment of the invitation does not constitute a response for purposes of this rule. However, an acknowledgment that requests inclusion for future invitations will be considered a response, and a report is required.

Where the person in receipt of an invitation containing a boycott term or condition is undecided about a response by the time a report would be required to be filed under the regulations, it is the Department's view that the person must file a report as called for in the Regulations. The person filing the report may indicate at the time of filing that he has not made a decision on the boycott request but must file a supplemental report as called for in the regulations at the time a decision is made (§ 760.5(b)(6)).

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34950, June 1, 2000]

#### SUPPLEMENT NO. 12 TO PART 760— INTERPRETATION

The Department has taken the position that a U.S. person as defined by § 760.1(b) of this part may not make use of an agent to furnish information that the U.S. person is prohibited from furnishing pursuant to § 760.2(d) of this part.

Example (v) under § 760.4 of this part (Evasion) provides:

“A, a U.S. company, is negotiating a long-term contract with boycotting country Y to meet all of Y's medical supply needs. Y informs A that before such a contract can be concluded, A must complete Y's boycott questionnaire. A knows that it is prohibited from answering the questionnaire so it arranges for a local agent in Y to supply the necessary information.”

“A's action constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.”

This interpretation deals with the application of the Regulations to a commercial agent registration requirement imposed by the government of Saudi Arabia. The requirement provides that nationals of Saudi Arabia seeking to register in Saudi Arabia as commercial agents or representatives of foreign concerns must furnish certain boycott-related information about the foreign concern prior to obtaining approval of the registration.

The requirement has been imposed by the Ministry of Commerce of Saudi Arabia, which is the government agency responsible for regulation of commercial agents and foreign commercial registrations. The Ministry requires the agent or representative to state the following: